

January 5, 2018

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**VIA ECFS**

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: **Notice of Ex Parte Presentation**, In the Matter of *Credit Union National Association Petition for Declaratory Ruling and Rules and Regulations Implementing the Telephone Consumer Protection Act*, Docket No. 02-278

Dear Ms. Dortch:

On Thursday, January 4, 2018, Leah Dempsey, Senior Director of Advocacy & Counsel for Credit Union National Association ("CUNA"), Scott Everett, Vice President of Member Business Services and General Counsel for Wright-Patt Credit Union, Inc., and Miriah Lee, Manager of Policy Impact for the Ohio Credit Union League, (Mr. Everett and Ms. Lee attending by phone), and the undersigned, met with Amy Bender, Legal Advisor to Commissioner Michael O'Rielly, to discuss CUNA's Petition for Declaratory Ruling<sup>1</sup>. Leah Dempsey, the undersigned and Miriah Lee, by phone, also met with David Grossman, Chief of Staff for Commissioner Mignon Clyburn to discuss the Petition.

Consistent with the Petition and the attached presentation, we explained that the Petition would help restore the balance Congress sought to achieve in protecting consumer privacy while not unduly interfering with legitimate business communications. We stressed the importance of these communications to credit union members and the chilling effect that current TCPA rules are having on the ability to provide important financial and governance information. During the meeting with Amy Bender, we also discussed the support for the Petition reflected in the letter from a bipartisan group of Members of the U.S. House of Representatives, which is also attached.

Please contact the undersigned if you have any questions.

Sincerely,

/s/ Michael H. Pryor

Michael H. Pryor  
Brownstein Hyatt Farber Schreck, LLP  
1155 F Street NW, Suite 1200  
Washington, DC 20004

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<sup>1</sup> *In the Matter of Credit Union National Association Petition for Declaratory Ruling and Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Petition for Declaratory Ruling (rel. September 29, 2017).

Marlene H. Dortch, Secretary  
January 5, 2018  
Page 2

cc: Amy Bender (via email)  
David Grossman (via email)

MHP:KJS

16285388

# Credit Union National Association TCPA Petition CG Docket No. 02-278

January 4, 2018

 Brownstein Hyatt  
Farber Schreck

# AGENDA

- Introduction to CUNA
- TCPA's Chilling Effect
- CUNA's Proposed Relief
  - Applies to informational calls only
  - Adopt an established business relationship exemption for autodialed wireless calls and/or
  - Exempt free to end user wireless calls
  - Establish reasonable privacy enhancing conditions

# INTRODUCTION TO CUNA

- CUNA is the largest national credit union trade association
  - Serves nearly 6,000 credit unions and their 110 million members
  - Credit unions are member-owned, tax-exempt, nonprofit organizations
- Most credit unions are small businesses with limited staff and resources
  - Nearly half of all credit unions (2,708 out of 6,000) have five or fewer full-time employees
  - More than half (3,457) have assets of less than \$50 million

# TCPA's CHILLING EFFECT

- Types of Informational Communications
  - Account and financial status
  - Financial education
  - Governance
  - Communications required or strongly encouraged by other agencies

# TCPA's CHILLING EFFECT (cont.)

- Uncertainty Regarding Compliance and Litigation Threats Are Causing Credit Unions to Stop Making Contact with Their Members
  - CUNA Internal Survey
    - 76% found compliance “very difficult” (30%) or “somewhat difficult” (46%)
    - 75% have curtailed or stopped using artificial or voice messaging systems
    - 35% that had used text messaging have cut back or stopped
  - Credit Unions have been targets of class action litigation

# CUNA's PROPOSAL

- Petition for Declaratory Ruling filed September 29, 2017 – Comment Cycle Closed
- Create EBR exemption for autodialed informational wireless calls
  - Parity with wireline calls, for which no consent is required
  - FCC precedent for statutory authority to create an EBR exemption
- Exempt free to end user wireless calls
  - Express statutory authority to exempt calls without charge
  - Ensuring calls are free creates unnecessary burden
    - Vast majority of plans have unlimited voice and text



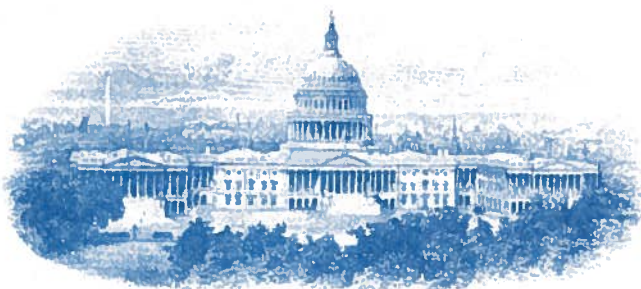
# CUNA's PROPOSAL (cont.)

- Privacy Enhancing Protections:
  - Limits on calling (1 per day/3 per week) unless otherwise exempted
  - Easy to use opt out that credit unions must honor
- Reflects today's communications environment
  - Most recent numbers: 52% of households are wireless only; nearly 75% for adults 25-34; 70% of renters; 67% for adults living in poverty.

**STEVE CHABOT**  
MEMBER OF CONGRESS  
FIRST DISTRICT, OHIO

INCLUDES MOST OF HAMILTON COUNTY  
AND ALL OF WARREN COUNTY

DEAN OF THE OHIO  
REPUBLICAN DELEGATION



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

December 4, 2017

**COMMITTEES:**

**SMALL BUSINESS**  
CHAIRMAN

**FOREIGN AFFAIRS**  
SUBCOMMITTEE  
ON ASIA AND THE PACIFIC  
SUBCOMMITTEE ON MIDDLE EAST  
AND NORTH AFRICA

**JUDICIARY**  
SUBCOMMITTEE ON CRIME, TERRORISM,  
HOMELAND SECURITY AND INVESTIGATIONS  
SUBCOMMITTEE ON COURTS, INTELLECTUAL  
PROPERTY, AND THE INTERNET."

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Pai:

As you are aware, on September 29, 2017, the Credit Union National Association (CUNA), which serves nearly 6,000 credit unions and 110 million members, filed a "Petition for Declaratory Ruling" regarding the applicability of the Telephone Consumer Protection Act (TCPA) on informational calls placed by or on behalf of credit unions.

The credit union industry has a vital role in providing financial services to millions of consumers across the nation. As not-for-profit financial cooperatives, credit unions are owned by their members, resulting in a governing structure that is prudent and consumer-driven in decision-making and daily operations. This unique relationship between credit unions and their member-owners is bolstered through regular dialogue and communications about time-sensitive financial information, security related matters, and educational material that are a significant component of their mission and cooperative structure. Credit unions members want and need such information to remain financially healthy and to have timely information about their accounts.

In its petition, CUNA makes specific requests that "the Commission exempt from the TCPA's 'prior express consent' requirement informational calls made by credit unions to wireless numbers in one of two circumstances: (1) the wireless subscriber has an established business relationship with the credit union; or (2) the calls are in fact not charged to the called party, for example because the called party's wireless plan has unlimited minutes and texts." We request that the Federal Communications Commission (FCC) give thorough consideration to the points raised in the petition and provide, at the very least, more clarity and guidance on what communications are within the rights of credit unions to conduct with their member-owners. Notably, this would not allow credit unions or any other business any additional ability to make calls for commercial purposes such as selling new products or marketing other services. It would not change the rules protecting consumers from telemarketing calls in any way.

Congress never intended the TCPA to restrict normal and expected business communication. Nevertheless, the FCC's TCPA rules and guidance have evolved into a confusing tangle of restrictions that subject credit unions to potentially crippling liability and are demonstrably reducing consumer-friendly informational communications.

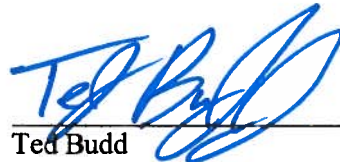
While there may be more than one way to address the concerns raised by credit unions, we do acknowledge that if these or similar concerns are not addressed with further clarity, guidance, or some form of exemption, an increasing number of credit unions will continue to be impeded from sending important financial information to their members because of both the lack of clarity in how to comply and out of fear of excessively costly litigation, due to the uncertainty surrounding the TCPA. Given light of the unique relationship credit unions have with their member-owners, as well as the sheer number of Americans who utilize these institutions for their financial services, it is our hope you will find a common-sense solution to address these concerns.

Thank you for your time and consideration on this matter.

Sincerely,



Steve Chabot  
Member of Congress



Ted Budd  
Member of Congress



Steve King  
Member of Congress



Robert Pittenger  
Member of Congress



John Garamendi  
Member of Congress



David B. McKinley, P.E.  
Member of Congress



Ralph Norman  
Member of Congress



Susan W. Brooks  
Member of Congress



David N. Cicilline  
Member of Congress

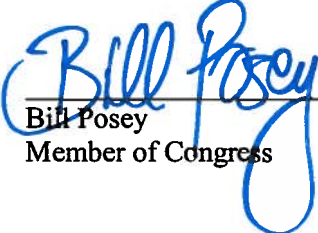


Erik Paulsen  
Member of Congress



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Billy Long  
Member of Congress



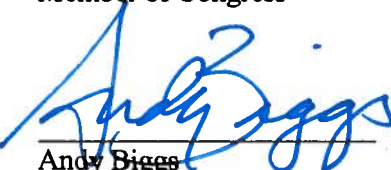
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Bill Posey  
Member of Congress



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Kristi Noem  
Member of Congress



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Andy Biggs  
Member of Congress